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Membership ballots and the value of intra-party democracy

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On the face of it, membership ballots present a clear case in which intra-party democracy comes into collision with core principles of representative democracy: they weaken the autonomy of representatives, and undermine the authority of the voters. In this article, I investigate whether this is correct, and whether membership ballots are, therefore, democratically illegitimate, using the controversial 2013 *Mitgliederentscheid* in the German Social Democratic party as a critical case. I argue that there is nothing democratically suspect about membership ballots and mount a defence of intra-party democracy as intrinsically valuable, appealing to a principle of equal respect for persons as autonomous agents. It turns out that endorsing this principle has two possible implications: that the content of the ballot must be open to deliberation, and that these deliberations should be rendered open to non-members. I discuss these implications and offer some institutional design guidelines.

Keywords: *Political parties, membership ballots, intra-party democracy, democratic theory, party membership*

Introduction

In December 2013, the members of the Social Democratic party of Germany (SPD) voted in a membership ballot on the party's coalition agreement with the centre-right CDU/CSU, the political alliance of the conservative Christian Democratic Union of Germany and Christian Social Union in Bavaria. A membership ballot is a general vote by the members of a political party on a single political question which is referred to them for a direct decision,ⁱ and this particular one was proposed by the SPD's leadership in response to widespread reservations about the potential coalition within the party. After the SPD came in second place behind the CDU/CSU in the *Bundestag* elections in September 2013, a 'grand coalition' between the two major parties would have been the most obvious way forward, but several groups within the SPD protested against this plan. The ballot was intended to appease the critics and promote party cohesion. 'Holding the SPD together', suggested party chairman Gabriel at the SPD's federal party convention in November 2013, is 'more important than governing.'ⁱⁱ

The decision to hold a membership ballot over the question of whether the coalition government between SPD and CDU/CSU will materialise drew widespread criticism. Critics from outside the party objected that the ballot undermines both the authority of the voters, since it gives the will of the party members more weight than the will of the voters, and the constitutional proscription of imperative mandate, since it binds representatives to decide according to the will of the party members. If these objections are accurate, then the SPD's membership ballot presents a clear case in which intra-party democracy conflicts with two core principles of representative democracy. This raises fundamental questions about the normative legitimacy of direct-democratic processes within parties. When, if at all, is it legitimate to permit ordinary party members to make decisions that are potentially at odds with the preferences of the voters, and are binding for elected representatives? Thus, the issues raised by the SPD's internal ballot pose a challenge both for political practitioners who seek to make parties more internally democratic, and for political scientists (like myself) who are concerned with the normative foundations of intra-party democracy. Can direct democracy within parties be combined with responsiveness to voters and a degree of autonomy for elected representatives, or must it yield to these ideals?

In this article, I look closely at the issues raised by the membership ballot. I take seriously the main criticisms levelled at the ballot, and ask whether direct democracy within parties can be defended on normative grounds. I begin by auditing the two just-mentioned objections: that membership ballots undermine the capacity of representatives to make decisions relying on their autonomous judgment, and that they illegitimately prioritise the party members' preferences over those of the voters. I reconstruct these objections theoretically, and go on to argue that they both misfire. Specifically I suggest that the autonomy of representatives is in any case constrained by their partisanship, and that party members and voters legitimately *share* authority over representatives. I defend the latter point by appealing to a principle of equal respect for persons *qua* self-determining agents, which contends that empowering party members is nothing less than a requirement of democratic justice. Endorsing this principle turns out to have important implications for how we think about the inclusiveness of membership ballots. In the

article's final section, I discuss these implications and reflect on how membership ballots ought to be designed in order to meet requirements of justice.

Two objections to membership ballots

The argument from representatives' autonomy

There are two main grounds on which a membership ballot might be opposed. The first is that elected representatives ought to make decisions relying on their autonomous judgment. On this view, deferring to the party membership undermines the autonomy of representatives. I call this the *autonomous representative argument*.

This argument has practical relevance for obvious reasons. In most representative democracies, the principle that elected representatives ought to make decisions relying on their autonomous judgment has constitutional status (Pasquino 2001, p. 205; Urbinati 2008, p. 44).ⁱⁱⁱ Indeed, most democratic constitutions forbid so-called *imperative mandate*, stipulating that representatives must not be obliged to follow the will of the electors or other third parties without any possibility of modifying it. The German *Grundgesetz* (Basic Law) is no exception here. Article 38 (1) prescribes that members of parliament are 'representatives of the people as a whole' who are 'not bound by mandates (*Aufträge*) or directives and only subject to their own conscience (*ihrem Gewissen unterworfen*)' (for a discussion of this article and its history, see Müller 1966).^{iv} For this reason, several constitutional lawyers objected that the SPD's membership ballot about the coalition agreement with the CDU/CSU is incompatible with the demands of the *Grundgesetz*.^v The main problem, they argued, is that § 13 (6) of the SPD's party statute specifies that the outcome of a membership ballot is *binding* for 'the institution [within the party] to which the ballot is addressed,' which in the present case would mean that the ballot's outcome is binding for the party's representatives in the national legislature.^{vi}

To understand whether this objection can be sustained, we need to look more closely at its theoretical foundations. Why would it be important in a

representative democracy that elected representatives rely on their own judgment, rather than on the judgment of others? The main argument for banning imperative mandate is that it poses a threat to the operation of a deliberative assembly. This view is predicated on the idea that legislatures should be sites of reasoned deliberation about the national good—an idea that goes back to Edmund Burke (1852 [1774], p. 236), who believed that parliament ought to be a ‘*deliberative* assembly of *one* nation, with *one* interest, that of the whole’ (on this view of representation, see also the canonical treatment of Pitkin 1967). Burke’s point was that discovering what is best for society at large is not possible when MPs are obliged to follow the will of others—be it their constituents, members of their party, or other third parties.^{vii} Rather, representatives ought to make independent judgments on the basis of deliberative exchanges about the common good.^{viii} A membership ballot clearly puts this kind of deliberative judgment out of reach. By committing representatives to act in the name of the party membership, it limits their capacity to decide on the basis of giving and hearing reasons for and against certain courses of action, thus undermining the deliberative procedure as a whole.

Could a successful challenge to intra-party referenda be mounted by appealing to this ideal of parliamentary deliberation? That elected representatives should aim at the good of the whole and make impartial judgments informed by rational deliberations is no doubt an attractive ideal, even if the degree of independence authors like Burke want to grant representatives has an elitist ring (on this point, see Mansbridge 2009, p. 386). Nonetheless, the autonomous representative argument is misleading, in that it overstates representatives’ capacity of independent judgment. For those representatives who can be bound by a membership ballot are inevitably *partisans*, and this implies that their autonomy is somewhat constrained regardless of whether or not a membership ballot has been held.

What constrains the autonomy of partisan representatives is, well, their partisanship. As a jointly held commitment about collective action, partisanship structures the way in which representatives ought to relate to each other. The atomic ingredient of this commitment are shared, temporally extended intentions. Characteristically, partisans share the intention to ‘shape

and design political institutions in accordance with particular principles and aims' (Ypi, forthcoming). This means not that each partisan individually holds the intention '*I* intend to fight social inequality' (for example), and that their intentions mysteriously converge. Rather, each partisan holds the intention '*I* intend that *we* as partisans fight social inequality.' This collective '*we*' lies at the heart of partisanship: engaging in a political party is simply not intelligible if it makes no reference to similarly leaning partisans.

In virtue of holding shared, temporally extended intentions, partisans form what Margaret Gilbert has called a '*plural subject*,' that is, a collective whose members are responsible to each other in the pursuit of their shared aims (Gilbert 2006). So conceived, it is indeed a *moral* requirement for partisans to act in conformity with their shared commitments; they *owe* each other a degree of conformity, so to speak. For, as one theorist of interpersonal commitments puts it, '*having commitments means not deciding every issue solely on its merits, if we mean by that dispassionately adjudicating an issue "from nowhere," as an objective and wholly unencumbered being would do*' (Stroud 2006, p. 511).^{ix} Rather, commitments constrain our '*deliberative field*,' limiting the choices morally available to us. This is how partisan commitments work, too. They constrain the range of possible courses of action representatives may pursue.

In legislatures, the site of partisan activity we are mainly concerned with here, the force of partisan commitments is palpable especially when representatives vote. For representatives, the field of available options is constrained in obvious ways. Typically they vote with their party, or with their party and the party or parties it forms a coalition with.^x That they cast deviating votes is an exception to the rule: ordinarily a product of internal squabbling rather than a demonstration of their capacity for full unconstrained judgment as envisaged by the autonomous representative argument. In cases of disagreement, party leaders or party whips can enforce party discipline to ensure that representatives toe the party line (for an empirical study, see e.g. Kam 2009). They can articulate collective aims, and so instil shared intentions in representatives.^{xi}

If what I have said up to this point is on the right track, then there is little reason to believe that representatives would vote more in line with their

party after an internal ballot than they would do without such a ballot. Indeed it seems that the autonomy of representatives is always constrained to some degree: so long as they are partisans, they are bound by certain shared commitments. A similar conclusion was reached by the German Constitutional Court in its summary judgment of December 6, 2013. Reacting to the criticism levelled at the SPD's ballot, the court ruled that the referendum is not unconstitutional, since it does not produce a stronger obligation for representatives to vote in line with their party than the norms of party loyalty which are in any case in place.^{xii}

A question that might be asked here is this: if representatives are always constrained in their autonomy by partisan commitments, wouldn't this still involve a violation of the ban on imperative mandate? There seems to be a deep-seated tension between partisanship and free mandate. Yet partisanship and free mandate conflict only on an interpretation of representative autonomy that may be termed *strong free mandate*. This is the conception of representative autonomy which Burke preferred,^{xiii} and the above-mentioned critics of the SPD's internal ballot seemed to have appealed to. It evokes an ideal of parliament as a deliberative assembly in which individual representatives make independent judgments based on reasoned deliberation about common ends. As we saw, however, this individualistic conception of legislative deliberation is empirically implausible, since partisanship shapes the actions of representatives in important ways. But not only that: it is also inappropriate as a normative ideal.

There are several normative arguments that speak against the ideal of a non-partisan legislature as prescribed by the strong free mandate view. One is that the absence of partisanship would make it very difficult for voters to hold parties and legislatures accountable. Without a degree of party unity, voters will arguably have a hard time figuring out whether the party they voted for is acting in accord with its election pledges and its general programmatic commitments. We may also argue, with Nadia Urbinati, that a non-partisan legislature would not only undermine accountability but indeed the wider purposes of political representation, for 'if election were truly a selection between and of single candidates—between and of individual names rather than political group names—representation would vanish because each person

would run for him or herself alone and would in fact become a party of his or her own interests' (Urbinati 2008, p. 39). If these arguments are correct, then we have good reasons to reject the idea of a non-partisan assembly, and with it the strong free mandate view.

A better way of thinking about the autonomy of representatives is what I call the *weak free mandate* view. In this view some loss of independence is acceptable, since on balance the benefits of partisanship outweigh the loss of some ability to deliberate on the part of representatives. This idea is mirrored in Article 38 (1) of the German *Grundgesetz*, which states, to repeat, that members of parliament ought to be 'only subject to their own conscience,' and thereby leaves room for all kinds of commitments. The point here is simply that representatives must in principle be free to make decisions that run counter to the party line without facing sanctions (see Müller 1966, pp. 10-13). But they may well be 'partisan by conscience,' and accept all the responsibilities this involves, without thereby violating free mandate. With this more relaxed—and more intuitively plausible—definition of free mandate in hand, we can see that partisanship and free mandate are fundamentally compatible.

Perhaps the reader thinks that this argument misses an important distinction. Is following one's partisan conscience not quite different from following a binding decision by the party members? Recall that § 13 (6) of the SPD's party statute stipulates that the outcomes of membership ballots are *binding* for 'the institution to which the ballot is addressed.' Contrary to what I suggested up until this point, this seems to imply that representatives have no room at all to 'follow their conscience.' However, it is important to understand that the constitutional principle that representatives must be 'only subject to their own conscience' comes in as a safeguard here, warranting that individual MPs can vote against the party members' decision if they see fit. Indeed, since the demands of the *Grundgesetz* overrule those of the SPD's party statute, § 13 (6) of the latter does not apply with full force in the present case. Even if MPs who vote contrary to a membership ballot's outcome may face sanctions within the party (sanctions they may be able effectively to contest appealing to the *Grundgesetz*), that outcome cannot be binding in the sense that it *suspends* the constitutional ban on imperative mandate. Granted that there is a concep-

tual difference between making a decision based on one's political conscience and making a decision based on formal rules that bind one to decide in a certain way, that difference simply does not matter here.^{xiv}

The conclusion to take from examining these arguments is that the objection that a membership ballot constitutes an illegitimate constraint on the otherwise-warranted autonomy of MPs fails. A membership ballot does not constrain the autonomy of representatives more than their partisan commitments, and these commitments are fully compatible with free mandate. So if such a referendum is wrong, it is not because it undermines the autonomy of representatives—or because anything less than wholly autonomous representatives would be unacceptable in a representative-democratic legislature.

The argument from voters' authority

Let's turn now to the second, and more weighty, objection to membership ballots. This contends that elected representatives ought to aim at the good of the voters, as judged by the voters. On this view, deferring to the party membership undermines the voters' legitimate authority. I call this the *voter authority argument*.

Arguments of this kind figured prominently in the debates surrounding the SPD's membership ballot. Several commentators criticised that giving ordinary party members the power to decide whether the government coalition between the SPD and the CDU/CSU will materialise compromises the 'will of the voters,' who were generally interpreted to have voted in favour of a grand coalition.^{xv} Some critics worried that a membership ballot would in fact introduce a form of 'two-tier suffrage' (*Zweiklassenwahlrecht*), in which the preferences of the party members are given more weight than the preferences of the voters.^{xvi} So the issue we have to address is whether the ideal of representation on which the voter authority argument rests is defensible on normative grounds. For whether the argument has traction as a challenge to membership ballots depends on the soundness of the idea that representatives should follow the voters' will as closely as possible.

Democratic folk morality is generally unambiguous about the duty of elected representatives to act in line with the voters' preferences, and so is the

larger part of mainstream empirical political science, especially scholars working on representation and accountability (Rehfeld 2009, p. 217). The scholars in question typically assume a *delegate model* of representation, in which representatives ought to rely not so much on their own judgment as on the judgment of the voters. In this model, representation begins upstream from election day, when candidates ask citizens for their vote, making all sorts of promises and assurances. As representation theorists rightly point out, these transactions are normatively significant. When citizens accept a candidate's promissory commitments, or take her 'at her word,' this generates obligations that 'follow the candidate to the legislature,' constraining the way in which she may permissibly act (Beerbohm, forthcoming).^{xvii} If the elected candidate flouts these obligations, voters are warranted in experiencing negative reactive attitudes. As a consequence, they may refuse re-election, which means that they can effectively sanction normatively objectionable behaviour on the part of representatives (Mansbridge 2003, p. 516). So even if a representative does not have intrinsic reasons to observe her obligations, the threat of not being reelected provides a strong extrinsic motivation to conform. (One need scarcely add that this concept of representation is diametrically opposed to the concept of representation the autonomous representative argument employs.)

The delegate model of representation finds its most formal and robust expression in the so-called 'parliamentary chain of delegation,' in which 'voters delegate to individual [partisan] members of parliament, members of parliament to parliamentary majorities, parliamentary majorities to a prime minister, a prime minister to policy makers in the cabinet and cabinet ministers to civil servants' (Neto and Strøm 2006, p. 623). With this conception of representative government in hand, we can see clearly why membership ballots are objectionable from the perspective of the voter authority argument: in the formal chain of delegation, there is simply no place for party members' interventions; the vector of delegation points directly from the voters to the representatives (see Müller 2000, p. 312). Therefore, a membership ballot would constitute an illegitimate interference in the process of preference transmission from voters to representatives.

The main problem with this model is that it turns a blind eye to the internal life of parties. By reducing parties to their parliamentary arm, it

brackets out important intra-party procedures through which party members make demands on the future actions of representatives in a way that limits the authority voters exercise over them. Chief amongst these procedures are candidate selection practices. In most political parties, ordinary party members select (either in person or through delegates) who will run for the party in the next election. This is also true in the case of the SPD, the party we mainly focus on here (Hazan and Rahat 2010, p. 46).^{xviii} And just like in electoral representation, candidate selection involves normative transactions between party members and would-be candidates upstream from ‘selection day,’ which create obligations for future candidates. Suppose an aspiring candidate articulates a set of political aims vis-à-vis the internal selectorate in order to win their support. Her argumentation might look something like this: ‘I intend that we achieve G together. This requires that you support my candidacy.’ If the selectors accept the candidate’s commitment, the candidate incurs a responsibility to act in such a way as to achieve G if she is elected into the legislature. If the candidate flouts her obligations, party selectors may refuse to reselect her in the next election, perhaps even launch a collective effort to thwart her candidacy. So party members too have sanctioning powers at hand that give them considerable authority over representatives.

One way of looking at this is to say that voters and party members are *co-principals*. They both exercise authority over representatives, which is grounded in obligation-generating transactions between the different parties, and bolstered by the principals’ sanctioning powers.^{xix} This gives us reason to question the voter-centrism of the voter authority argument. If the authority voters exercise over representatives is not absolute, but shared with party members, might it be permissible to commit representatives to act in line with the preferences of the latter in the case of membership ballots?

It is indeed permissible; or so I want to argue in what follows. Some readers, however, may want to resist the argument from co-principalship. In line with academic critics of intra-party democracy, they might insist that representatives should do first and foremost what the voters want, regardless of whether or not they incur obligations vis-à-vis the party members prior to election day. To justify this claim, they could appeal to the brute fact that the voters are many, and argue that the numerous have a kind of moral claim to

democratic authority simply by their numbers. (At several stages in the debate surrounding the SPD's internal ballot, critics put forward arguments to this effect.^{xx}) For such objections to succeed, however, one would also have to assume that voters and party members hold conflicting preferences, perhaps even that their preferences develop on separate tracks, largely uninformed by one another (for such a view, cf. Katz and Cross 2013, p. 171).^{xxi} For if there were a broad overlap in the preferences of party members and voters, surely there would be nothing contemptible in empowering party members: indeed, it would then *strengthen* the voters' position if members could exercise direct influence on the party's decisions and monitor the actions of representatives.^{xxii}

An instrumental justification of intra-party democracy

One possible reply to this objection is that voters and party members are not as different from one another as it might seem. Empirical studies of party members reveal that they are, ideologically and sociologically, much more like members of the general public than many critics of intra-party democracy are willing to admit (see Norris 1995; Scarrow and Gezgor 2010; Scarrow 2014, pp. 210-211; van Haute and Gauja 2015). That ordinary party members are ideological 'purists' might be true in some cases, but there is little evidence that this is a general tendency. Furthermore, the party members who are most likely to participate in internal decision-making procedures will probably be *active* members, who are typically organised in local party organisations. These organisations tend to be directly in touch with the voters on the ground and so particularly sensitive to their demands and concerns (Clark 2004; Wolkenstein, forthcoming). Contrary to what critics of intra-party democracy usually claim, then, the fact that party members exercise some authority over elected representatives might indeed *help* parties to represent their voters' interests, as I have suggested in the previous paragraph; it may reinforce, rather than undermine, the voters' authority. If this is correct, then it seems that the co-principalship of party members and voters can be defended on the grounds that allowing party members to exercise influence over representatives ultimately strengthens the position of the voters.^{xxiii}

The problem with this reply is that its logic runs dry once the aims and preferences of voters and party members are out of sync. The authority party members exercise over representatives benefits voters only insofar as members *de facto* hold views that are similar to theirs (or are willing to act as delegates of the voters even if they disagree with them). Now, as I have said, it is generally atypical that the interests of voters and party members are completely at odds. But when divisive issues are at stake conflicts may ensue, both between party members and voters and within each group. This renders arguments justifying representatives' responsibilities towards ordinary party members on such 'instrumental' grounds susceptible to the objection that they fail once disagreements between party members and voters arise. To pre-empt such objections, a stronger argument in support of those responsibilities is needed.

An intrinsic justification of intra-party democracy

Such an argument, I suggest, must appeal to the intrinsic value of intra-party democracy. This consists in the fact that intra-party democracy instantiates equal respect for the concerns of the party members. On this view, involving members in internal decision-making mechanisms (like candidate selection procedures) has a moral claim as a way of recognising their democratic political equality. Arguments of this kind are familiar from standard theories of democracy. Theorists defending democracy on the grounds of its intrinsic value treat equal respect (ER) for persons qua autonomous, self-governing agents as a central normative principle for the design of public political institutions.

Let's rehearse the argument in support of ER as an institutional design principle, as formulated by Thomas Christiano (2004, p. 276). Justice, the argument runs, requires public equality, and so 'demands equal respect for the judgment of each.' This is instantiated in 'equality in voting power, equality of opportunities to run for office, and ideally equality of opportunities to participate in the processes of negotiation and discussion that lead up to voting (p. 275).' Excluding people from participating in democratic procedures, on the other hand, is intrinsically unjust, for '[a]nyone who is excluded from participation (...) can see that his or her interests are not being taken seriously and

may legitimately infer that his or her moral standing is being treated as less than that of others (p. 276).’

The intrinsic value-argument for intra-party democracy contends that all of this applies to the internal life of parties too, and applies for largely the same reasons. Because justice requires equal respect for the judgment of each, parties ought to involve their members in internal decision-making procedures. Those who are excluded from these procedures can legitimately infer that their moral standing is being treated as less than that of others, notably of those wielding power within the party. Now if justice requires that party members are involved in internal decision-making procedures, it seems that the responsibilities these procedures generate for representatives can be defended as the legitimate product of transactions that instantiate democratic justice.

Note that to make the point that intra-party democracy is intrinsically valuable, I need not claim that the instrumental argument in support of intra-party democracy is objectionable as a whole. For my own part, I am not unsympathetic to the instrumental argument, and I think that strengthening the connection between citizens and government is one of the most important functions intra-party democracy can serve. What I want to suggest is simply that for the reasons given above, the fact that the ‘co-principalship’ of party members and voters may enhance the link between voters and representatives is not *sufficient* to justify intra-party democracy. The intrinsic value argument provides a stronger, more compelling defence of the shared authority of voters and party members.

Someone might hold against the intrinsic justification of intra-party democracy that political parties and democracy at large need not be congruent in their values. ER, it might be said, may well inform our intuitions about democracy on a large scale, without it following that it should apply to political parties too. To make this point, however, the objector would have to show *why* we should grant parties this status. The most obvious strategy would be to argue that parties belong in a field of institutions and social relations where principles of justice do not apply directly, and ‘local justice’ holds sway (i.e. civil society). Using Rawlsian language, it may be said that parties belong in the ‘background culture’ of society, and not in the ‘basic structure.’

But while it may plausibly be argued that the content of party politics and the motivation for partisan engagement arise in the ‘background culture,’ it is hard to think of a good reason why parties themselves should be seen as fully belonging there.^{xxiv} One straightforward argument for why parties should *not* be seen as part of the ‘background culture’ is often mentioned in the analysis of the organisational development of political parties in the empirical literature on the topic: as organisations, parties tend to be closely entwined with the state. Katz and Mair (2009, p. 755), two empirical scholars at the forefront of research on the changing relationship between parties and the state, have catalogued numerous ways in which parties are becoming ‘ever more dependent on rules and laws laid down by government’ (which they devise themselves) as well as ‘much more obviously defined by their institutional roles.’ What their findings reveal is that parties often enjoy direct access to the state machinery, make their own laws, and use patronage for the delivery of policy on behalf of the state.^{xxv} This means that parties exercise important autonomy-infringing powers that were traditionally the prerogative of the state, thus acting effectively as ‘basic structure’-institutions. It may, therefore, reasonably be said that at least insofar as parties are (as Katz and Mair suggest) institutions of the state, principles of democratic justice ought to guide the design of party organisations.

One could object to this argument that party members still engage in parties on a voluntary basis, which makes norms for the internal governance of parties less stringent (on such a view, cf. Sangiovanni 2007, p. 12). For one, it might be argued that party members have viable alternatives to membership which are not excessively burdensome. If they dislike their party’s internal rules, they can join another party or form a new party. This means that demanding to be treated as an equal is not an entitlement party members can rightfully claim, at least not on the grounds of justice.

However, one should be cautious with overstating the viability of alternatives to membership. Not only is forming a new party an extremely costly, and likely unsuccessful, enterprise due to the institutional constraints emerging parties ordinarily face (cf. Stoll 2013). It is also not unlikely that for persons who, like most party members, are strongly committed to a specific

political party, forming a new party or joining a different party is simply out of the question. Analogous to the ‘voto di appartenenza,’ their membership is an expression of deep solidarity and identification with the party, which is to some degree independent of policy agreement. Indeed, it seems not exaggerated to say that for some partisans, the ability collectively to shape and design political institutions through participating in *their* party is essential for acting on their plan of life. For them, the party performs the function of a lasting associative relation which ‘coordinates future action both on behalf of their future selves and of similarly committed others’ (Ypi, forthcoming). So I would argue that, at least in some cases, alternatives to membership may actually prove ‘excessively burdensome’ for party members.

Of course, even assuming that this is correct, someone might suggest that whether party members can rightfully claim to be treated as equals depends entirely on whether they voluntarily *consented* to the party’s internal rules of governance. Since they joined the party having some idea of these rules, it may be said, they have given their consent and so waived their entitlement to equal treatment. (Cordelli [forthcoming] notes rightly that if one thinks that this is the sense in which voluntariness blocks egalitarian demands, then many voluntary associations would not meet this condition. ‘We do not explicitly consent to all the terms of churches and we may be compelled to join trade unions.’)

A reply to this argument will have to turn upon a previous theory of contractual obligation. If one thinks that coercion-free consent is a sufficient condition for a contract to have moral force, one may be inclined to believe that party members indeed waive their entitlement to be treated as equals when they join a party, even if their consent is only tacit. But there are reasons to believe that one cannot consent to everything and that even actual consent may be invalidated in some cases. For instance, it is often said that one cannot consent to enslavement, or that persons who consent to become citizens of a country different from their original one cannot waive their entitlements to equal treatment. These two examples are only on the far end on a continuum of things one cannot reasonably consent to, however. I submit that party members can also not genuinely consent to being treated as morally inferior by a self-interested party elite that aims to ‘drown out the activists’ to sustain

its power, as is often the case in parties that are internally undemocratic (Katz and Mair 2009, p. 759). Even an explicit consent to such subjection to elite rule would seem to have no normative force. For these types of agreement, once regarded as permissible, undermine the most basic norms of political and moral equality (cf. Cordelli, forthcoming).

It seems, therefore, that demands of equal respect retain their moral force within political parties independently of members' consent at entrance, and independently of possible exit-options. This means that the procedures of internal democracy that generate obligations for representatives vis-à-vis the members of their party can indeed be defended on the grounds that they instantiate ER. There is nothing normatively suspect about the fact that party members and voters *jointly* exert some authority over representatives. From this, it follows that the argument that a membership ballot compromises the authority of the voters fails too. A membership ballot is not an illegitimate constraint on the authority of the voters, since voters and party members are legitimate authority-sharers in relation to elected representatives. Once we acknowledge the full complexity of the chain of delegation, and accept that representatives can incur obligations towards ordinary members, appeals to the unconstrained authority of the voters ring hollow.

The demands of inclusiveness and institutional design

On the face of it, the intrinsic justification for intra-party democracy I have advocated seems sufficient to justify the use of membership ballots. For if involving party members in internal decision-making procedures can be defended by appealing to ER, by implication this defence extends to *all* internal decision-making procedures. What the intrinsic argument for intra-party democracy furthermore suggests is that there is nothing normatively problematic in members and voters holding different preferences about policy issues. If, as I have argued, the normative transactions that ground the principal-agent relationships between voters/party members and representatives legitimately confer action-guiding obligations onto representatives, it seems also legitimate that these obligations direct representatives to different kinds of action. This implication is important because it suggests that membership

ballots are legitimate *even if* party members' preferences concerning the issue on which the ballot is held differ radically from the preferences of the voters concerning that issue.

One might question however whether this conclusion not ultimately conflicts with the demands of ER. After all, if ER requires that political institutions show equal respect for the judgments of persons qua self-determining agents, it seems to follow that the voters' preferences must be taken equally seriously by the party. So even if it is perfectly legitimate that members exercise authority over elected representatives, parties ought not simply ignore the voters' judgments prior to a membership ballot. Rather than favouring one principal (the members) over the other (the voters), parties ought to show equal recognition for the judgments of *both* principals.

Let's accept this argument as it stands for the time being. How could equal recognition be achieved in practice? One obvious strategy would be to institutionalise a 'pre-ballot deliberative procedure' in order to mediate between the two principals. Such a procedure would show recognition for the equal standing of voters and party members in that it gives them the opportunity to balance their respective arguments against each other before the members go on to make a binding decision. If, for example, the members and voters of party X disagree over policy P, the party could invite voters to participate in internal fora, in which they can present their arguments concerning that policy and hear the counter-arguments of the party members. Ideally, party members and voters would in the end reach some sort of integrative compromise, agreeing on a mutually advantageous course of action.

In some respects, the just-described scenario mirrors the situation in Germany prior to the SPD's membership ballot which serves as our critical case in this article. According to a survey fielded in the week before the referendum, 78 per cent of the party's voters and 85 per cent of its members supported the grand coalition between SPD and CDU/ CSU.^{xxvi} Those who took issue with the potential coalition were generally voters and members who stand ideologically further to the left than the majority of the party's supporters and are at unease with some of the key social and economic policies proposed in the coalition agreement. Inside the party, it was in particular the *JUSOS* (the SPD's youth organisation, which leans traditionally more to the

left than the rest of the party) who rebelled against a cooperation of the two parties, objecting that the coalition agreement would block the progressive political change the SPD should aim at.

If we would apply ER here, what would follow? By and large, the institutional prescription would look much the same as in our hypothetical scenario: the party would have to offer a procedure in which arguments for and against could be articulated and debated. Only in this way, it seems, could equal respect be paid to all the available judgments.

The SPD approached the problem broadly in line with this prescription. Recognising the necessity to mediate between the different groupings, it organised ‘members’ conferences’ in each federal state in the weeks before the ballot, which allowed large numbers of members to debate the terms of the coalition pact with each other as well as with the party leadership.^{xxvii} These conferences not only gave the members a platform to explain their (partly conflicting) positions to one another. They also provided an opportunity for the party leadership to elaborate the reasons for why they support the grand coalition, compelling them to engage in two-way communication with the members on the ground. In this process, a wide range of different opinions were voiced and heard, reflecting the diversity of opinion among party members and the wider electorate. While some party members, notably the already-mentioned JUSOS, remained sceptical about the coalition agreement, there can be no doubt that involving the party membership in inclusive deliberations about the terms on which the future coalition should proceed greatly enhanced the legitimacy of the members’ decision ultimately to endorse the coalition agreement.^{xxviii}

But of course, the SPD permitted only *party members* to participate in the pre-ballot deliberations over the coalition agreement, and this gives rise to the objection that the procedure at least partially violated ER. For if we are to instantiate equal respect for persons *qua* autonomous, self-governing agents, arguably such procedures must be open to anyone. The party cannot plausibly be conceived as a bounded space. This also implies that the prior suggestion of including only party members and the voters of the party (in their capacity as co-principals of representatives) in pre-ballot deliberations is in tension with ER’s normative demands. Instead, the procedure would have to be open to *all*

citizens. Thus, a final question that needs to be addressed is whether respect for persons qua self-determining agents is compatible with excluding citizens from internal deliberations, and if so, where the line could permissibly be drawn.

The answer to our question might seem obvious. Insofar as it is not possible to restrict opportunities of political participation to a limited number of people *and* show respect for the judgments of all, parties indeed violate ER when, like the SPD, they deny citizens without formal party attachment the right to participate in pre-ballot procedures. If we follow the logic of ER to its conclusion in other words, we should have to say that these procedures must generally be open to non-members.

But though this proposal is conceptually coherent, at least two arguments can be given to show why making pre-ballot deliberations maximally inclusive is a less desirable solution than imposing limits on who is permitted to participate. First, allowing every citizen in a given jurisdiction to participate in pre-ballot deliberations runs the risk of making these deliberations *overinclusive*. Overinclusiveness occurs when people are included in a democratic procedure whose inclusion is counter-intuitive. Think for example about the inclusion of members of a rival party, who might have a strategic incentive to push for a decision that undermines the party's future electoral success. This is a well-known problem in American open primaries, where voters hostile to the party sometimes vote for a weaker candidate to give their own party an advantage (a practice known as 'raiding,' see Muirhead 2014, pp. 153-156), and it is likely to affect pre-ballot procedures too if they are open to anyone. Undeniably, this conflicts with our intuitions about the necessity of organisational integrity: including those who have reason to undermine the party would turn parties into larger deliberative assemblies that lose much of their partisan character, and from there it is only a short step to abolishing parties altogether.

This leads to the second argument: it may be said that widening involvement to non-members at key moments is unfair on those who have generally devoted themselves more to the party: the party's most committed members.^{xxix} It is unfair not solely because it violates a principle of interpersonal morality like 'appreciation for other people's efforts' but

because it constitutes a breach of a principle of *fair return* (which applies in addition to ER). A fair return obligation arises, I suggest, because by continuously promoting the party's goals, the committed members intentionally benefit others (e.g. their fellow partisans and the party elite), and because they incur costs, as political commitment entails many sacrifices (e.g. investing considerable amounts of time). It therefore seems reasonable to say that the party's most committed members ought to be given a different status than non-members, one that attaches special entitlements to their position. Indeed, *even if* the party members in question do not expect any returns from their activities—they might act purely out of solidarity with the party (see above)—it would seem wrong to treat those who have invested their efforts and energies into promoting the party's goals in a coordinated and continuous fashion in the same way as those who have merely voted for the party in elections, let alone those who routinely support rival parties.

So it seems that we need to find a way of balancing the normative demand that parties ought to include every citizen in their internal deliberations against the intuition that the number of those who get to have a say should be restricted. This is a challenging task, and it seems that there is no straightforward route to follow. One possible way forward is to operationalise ER not in terms of fully equal treatment but in terms of proportionality. Brighouse and Fleurbaey (2008) offer an intuitively appealing way of thinking about this, one that is consistent with the democratic ideals upheld in this article. They argue that equality in decision-making is less important than influence proportional to stakes in the decision—the higher the stakes, the stronger the participatory entitlements a person or group of people ought to have. This is what ER actually demands.

Let us look more closely at this strategy. If we want to operationalise ER via proportionality *and* make the case that access to intra-party procedures should be restricted to party members (or the most committed party members, anyway), then we would have to show that party members have the greatest stakes in the decision in question. Now it might be possible to argue that party members *do* have the greatest stakes in any intra-party decision since in

contrast to the wider population the outcomes of those decisions impact on their identity as partisans, which may shape their plans of life in important ways. But it is hard to deny that many decisions taken within a party also impact on the interests of many voters and members of the wider citizenry, perhaps even more profoundly than they impact on the interests of partisans. In any case, if the answer to the question of who should be included in a pre-ballot procedure depends on who has (the greatest) stakes in the decision, the answer will vary depending on what the decision is about. Thus conceiving ER in terms of proportionality pushes us towards a more complex conclusion than simply restricting participation in intra-party procedures to party members.

One problem with determining who has stakes in a decision is of course that for most decisions people will reasonably disagree over stakes. Who is affected, in what way, and how much is often heavily contested and cannot be settled once and for all. It is, one might say, an essentially *political* question. Does that mean that the proportional approach to ER can only get off the ground if we possess an uncontroversial metric for measuring stakes (which arguably doesn't exist)? It does not. Rather, as Valentini (2014, p. 795) suggests, the proportional approach to ER *can* get off the ground when 'there is some reasonable agreement on stakes.' That is, ER qua participation proportional to stakes can be a useful guide for questions of inclusion in democratic procedures in cases where it would be unreasonable to deny that certain people have great stakes in a decision.

The implication for membership ballots is that in decisions where it is more or less uncontroversial that certain non-members have great stakes, those non-members ought to be included in pre-ballot deliberations. By way of illustration, suppose a membership ballot is held in order to determine the party's position on disabled access to public spaces.^{xxx} In this case, it would be unreasonable to deny that the decision has a greater impact on disabled people than on the rest of the population. Thus, the right of the party to exclude disabled non-members is weakened by those particular non-members' stakes in the decision. The party would therefore have to include people with disabilities in pre-ballot deliberations, letting them present their views and

explain why they think as they do. Only in this way can the party ensure that equal respect is paid both to all those who have stakes in the decision.

But of course, there are very few decisions in which the distribution of stakes is thus clear-cut. As I said, typically the question of who has stakes in a decision is highly contested and cannot be settled conclusively. When that is the case, I suggest, it is permissible to restrict participation to party members, following the arguments for a restrictive approach I have presented above. This in fact follows logically from Valentini's point that the proportionality approach to ER can only effectively be employed when there is reasonable agreement on stakes: giving people a say roughly proportional to their stakes is simply not feasible when there is no agreement on what their stakes are. (And simply assuming roughly equal stakes seems rather implausible for the reasons we have just examined.) This was also the case in the membership ballot on the coalition agreement between SPD and CDU/CSU, our critical case in this article. Of course, insofar as a coalition agreement between two parties determines positions on a wide range of political questions, it impacts on the interests of most, if not all, citizens of the polity in question. But *how* and *how much* it impacts on *whom* is far from clear, not least because the general policy direction determined in a coalition agreement is quite different from the concrete laws and policies that will be made over the course of the future legislative term. So it is hard to think of a fair and plausible way in which individual persons or groups of people could have been involved in the SPD's pre-ballot deliberations *proportional to their stakes in the decision*. In light of this, it would indeed seem that restricting participation in the deliberative procedure preceding the ballot to party members, as the SPD did, is permissible. If there is one respect in which the SPD's ballot is open to criticism, then it is perhaps that both party members and party elites have paid insufficient attention to the question of non-members' stakes in the decision. In part because the pre-ballot deliberations were marked by passionate internal disagreements over whether the coalition agreement was 'social democratic enough,'^{xxxi} there was hardly any debate about the more specific ways in which the agreement might impact on particular citizens' interests. So there are certainly grounds on which the ballot may be faulted. But neither are these the grounds on which the ballot was publicly criticised, nor do they seem to

undermine the ballot's overall democratic legitimacy; or so I have sought to show in this article.

Conclusion

I first suggested that there are at least two reasons to think that membership ballots are illegitimate in a representative democracy, to do with the constraints they place on representatives and the extent to which they limit the authority of the voters. I then examined these reasons and found that neither of them gives sufficient grounds for thinking that membership ballots are democratically suspect. Central to my argument was an 'intrinsic value-justification' of intra-party democracy, which defends intra-party democracy on the basis that it instantiates equal respect for persons qua self-determining agents. Appealing to equal respect turned out to have several implications for the design of membership ballots. One was the requirement to provide a pre-ballot procedure, in which different views about the issue on which the ballot is held can be voiced and debated. Another was the normative demand to include non-members into these procedures. I suggested that, except in cases where there is reasonable agreement that certain non-members have a stake in the decision, we should resist the equal respect principle's pull towards inclusiveness. That is, internal deliberations prior to membership ballots should include non-members only when it is uncontroversial that they have high stakes in the decision.

The takeaway message of my argument is not so much that membership ballots are generally normatively unproblematic, but that parties ought to think carefully about issues of inclusiveness when holding such ballots. For always there is a case to be made that non-members have stake in an intra-party decision, yet only sometimes does including them seem normatively required. While I have not tried to provide a definitive rationale for defining the 'boundaries of the party,' I have hopefully managed to cultivate sensitivity to the issues at stake. Sensitivity to matters of inclusiveness seems vitally important at a time when parties increasingly render procedures of intra-party democracy open to non-members through such devices as open primaries or policy consultations with unaffiliated

supporters (Scarrow, 2014, ch. 8), and it is in this respect that the above discussion has implications for intra-party democracy more generally. If, as I have argued, the inclusion of those who have no formal ties to the party may lead to overinclusiveness and be unfair on the most committed members, it seems that parties that are internally exclusive are generally preferable to ones that are internally inclusive—that is, so long as there is no reasonable agreement on the stakes of certain non-members. This conclusion stands in opposition to the present institutional design orthodoxy, to be sure. But given the risks opening procedures of intra-party democracy to the wider citizenry holds, that orthodoxy might have to be reconsidered.

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Notes

ⁱ Since the early 1990s, parties across the democratic world have increasingly experimented with such ballots in order to give their members a more direct say over policy and personnel decisions (Scarrow 2014, pp. 181-186; for some in-depth case studies, see Sussman 2007). Prominent examples include the ballot held in 2004 by the French Socialist Party to decide the party's position on a European Constitutional Treaty, and the ballot on the same topic that the Danish Socialist People's Party held shortly thereafter.

ⁱⁱ The speech is available at <https://www.youtube.com/watch?v=panAIYVmy54>, retrieved 30 November 2013.

ⁱⁱⁱ An interesting exception is Serbia, where members of parliament were bound (by imperative mandate) to enact the voters's will until 2011.

^{iv} The German *Basic Law* is available online at <http://www.bundestag.de/bundestag/aufgaben/rechtsgrundlagen/grundgesetz/gg/245216>, retrieved 11 November 2014.

^v *Die Welt* 'Mitgliedervotum im Konflikt mit dem freien Mandat?', 3 December 2013, available at <http://www.welt.de/politik/deutschland/article122525059/Mitgliedervotum-im-Konflikt-mit-dem-freien-Mandat.html>, retrieved 4 December 2013.

^{vi} The SPD statute is available online at <https://www3.spd.de/linkableblob/1852/data/>, retrieved 20 December 2015.

^{vii} My analysis here is indebted to the excellent discussion of Burke's representation theory in Rehfeld (2009).

^{viii} The German constitution registers these demands more explicitly. Article 38 (1) of the German *Grundgesetz* has a rider that sets forth that MPs are 'representatives of the people as a whole'.

^{ix} Stroud's paper originally discusses the obligations people incur in friendships. On the conceptual resemblance of partisanship and friendship, see Beerbohm 2011, pp. 136-139; Muirhead 2014, ch. 5; Ypi, forthcoming.

^x Consider Samuel Beer's description of party discipline in the British Parliament: 'In the House of Commons were two bodes of freedom-loving Britons, chosen in more than six hundred constituencies and subject to influences that ran back to an electorate that was numbered in the millions. (...) Yet day after day with a Prussian discipline they trooped into the division lobbies at the signals of their Whips and in the service of the authoritative decisions of their parliamentary parties' (Beer 1982, pp. 350-351).

^{xi} This is a common practice in the German context. Empirical studies reveal that parties in the Bundestag regularly enforce *Fraktionsdisziplin*, and thus make deviant voting behaviour relatively rare (Sieberer 2010).

^{xii} BVerfG, Beschluss der 2. Kammer des Zweiten Senats vom 06. Dezember 2013- 2 BvQ 55/13 - Rn. (1-12). The full text of the verdict is available here: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2013/12/qk20131206_2bvq005513.html, accessed 5 December 2015.

^{xiii} That is, if we consider Burke's 1774 *Speech to the Electors of Bristol* to be representative of his views. Burke was on the other hand also a defender of political parties, which makes his position seem inconsistent in many respects. On Burke's defence of parties, see Rosenblum (2008, pp. 119-126).

^{xiv} Note in this connection that § 13 (6) of the SPD's party statute is formulated at a very general level. It is not specifically addressed to elected representatives in the national legislature. Instead, as laid out in § 13 (9) of the statute, membership ballots can be held at 'every [hierarchical] level of the party' (for the source, see fn. 5), and so the stipulation that they are 'binding' will mean different things in different contexts. Put in another way, membership ballots may be more or less binding depending on the level of the party at which they are held. For example, in local politics, where the constitutional ban on imperative mandate does not necessarily apply—it applies to *Landtage*, the legislative assemblies of German federal states but not (say) to local councils, where membership ballots may reasonably be held—the 'bindingness' of a ballots outcome may apply with full force to individual partisans.

^{xv} Often these interpretations referred to nationwide polls, in which a majority of the respondents expressed support for the grand coalition. But of course, to say that voters voted in favour of a grand coalition is in itself a problematic assumption as voters are standardly thought to vote for parties or policy platforms, but not for coalitions as such.

^{xvi} *Frankfurter Allgemeine Zeitung* 'Undemokratisch', 23 November 2013, available at <http://www.faz.net/aktuell/politik/harte-bretter/das-spd-mitgliedervotum-undemokratisch-12677011.html>, retrieved 25 November 2013.

^{xvii} Why this is so can be seen by looking at a paradigm commitment, namely a promise. If you have promised your kids to go to the cinema on Friday evening (and thus instilled in them the intention that *we* are going to see a movie together) there is a clear sense in which you will not decide simply on the merits what to do on Friday evening. Instead, your promise serves as a relatively fixed point that constrains your field of available options, as described in the previous sub-section. It creates, to put matters slightly differently, *pro tanto* reasons regarding how you can permissibly behave with respect to your promisees.

^{xviii} Note that in Germany's federal system mechanisms of candidate selection and intra-party delegation vary across the state's different federal levels, see Detterbeck (2013) and Hazan and Rahat (2010, p. 46).

^{xix} While this is generally overlooked in the normative literature on representation, which tends to pay little attention to the complex workings of political parties, scholars of intra-party democracy have rightly highlighted that, properly conceived, the parliamentary chain of delegation starts with candidate selection (Hazan and Rahat 2010, p. 12). This was initially meant as a purely empirical observation, but the arguments laid out here suggest that candidate selection also assumes normative relevance in that the transactions between party members and aspiring election candidates legitimately confer authority onto party members.

^{xx} In a much-discussed TV interview in the ZDF-Heute Journal on 28 November 2013, for example, TV anchor Marietta Slomka argued that it be questionable from a democratic perspective that in the intra-party referendum 477,000 registered party members could potentially overrule 12.840.000 SPD-voters, most of which are not members of the SPD.

^{xxi} A highly stylised rendering of this assumption would see party members, on the one hand, as ideological radicals, and voters, on the other hand, as rational pragmatists who demand that parties deliver policy.

^{xxii} I thank Chris Wratil for suggesting this point.

^{xxiii} There is nothing unfamiliar in this argument; indeed, arguments to this effect are rehearsed in some classic works on parties and intra-party democracy. See, paradigmatically, Michels ([1911] 1989).

^{xxiv} This is a common point in theoretical discussions of party. The focus is here usually on parties and public reason. Muirhead and Rosenblum (2006, p. 104) argue for instance that parties have ‘a foot in each sphere’ since they translate grievances manifest in society into distinctive conceptions of the common good, and so ‘refine and generalize particularist appeals by casting them in terms appropriate to public reason.’ On this point, see also White and Ypi (2010, pp. 384–385).

^{xxv} In Germany, the country we mainly focus on here, parties appoint members to key position in the public sector and in semi-public institutions in order to secure policy implementation (John and Pogunkte 2012). For in-depth case studies of patronage, see the excellent volume by Kopecký et al. (2012). Note also that in most European democracies political parties are in some form acknowledged in the constitution—often key democratic principles such as political participation, representation, pluralism and competition are almost exclusively defined in terms of party—thus being directly inscribed into the ‘basic structure’ of societies (Biezen 2011). The German *Grundgesetz*, for example, contains a general requirement that parties’ internal organisation conform to democratic principles.

^{xxvi} Many of them expressed support for an alternative coalition between the SPD and the Greens (*Bündnis 90/Die Grünen*) as well as the far-left *Linke* party. See [n-tv.de](http://www.n-tv.de/politik/SPD-Waehler-wollen-Groesse-Koalition-article11830241.html) ‘SPD-Wähler wollen Große Koalition’, available online at <http://www.n-tv.de/politik/SPD-Waehler-wollen-Groesse-Koalition-article11830241.html>. Also see *Deutsche Welle* ‘Skeptische Genossen - Die SPD und die Koalition’, available online at <http://www.dw.de/skeptische-genossen-die-spd-und-die-koalition/a-17172128>, retrieved 29 December 2014.

^{xxvii} *Die Zeit* ‘SPD-Parteispitze auf Werbetour’, available online at <http://www.zeit.de/politik/deutschland/2013-11/spd-mitglieder-cdu-koalition>, retrieved 30 December 2014.

^{xxviii} In the end, 75.96 per cent of the members voted in favour of the coalition.

^{xxix} I thank Lea Ypi for suggesting this argument.

^{xxx} The example draws on the discussion in Valentini (2015, p. 795).

^{xxxi} *Frankfurter Allgemeine Zeitung* ‘Sieben Juso-Landesverbände gegen große Koalition’, 2 Dezember 2013, available at <http://www.faz.net/aktuell/politik/bundestagswahl/spd-mitgliederentscheid-sieben-juso-landesverbaende-gegen-grosse-koalition-12691202.html>, retrieved 10 December 2015.

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